

**BEFORE THE DIVISION OF ADMINISTRATIVE HEARINGS
STATE OF COLORADO**

Case No. OS 2002-031

AGENCY DECISION GRANTING SUMMARY JUDGMENT

**IN THE MATTER OF THE COMPLAINT FILED BY MAC WILLIAMS
REGARDING ALLEGED VIOLATIONS OF THE FAIR CAMPAIGN PRACTICES
ACT BY RON TECK and THE CANDIDATE COMMITTEE "FRIENDS OF RON
TECK".**

NATURE OF COMPLAINT

On November 26, 2002, Mac Williams (Complainant) filed a complaint with the Secretary of State alleging that Senator Ron Teck and the Candidate Committee "Friends of Ron Teck" (Respondents) violated the Fair Campaign Practices Act (FCPA) by expending candidate committee money on personal travel expenses for legislative duties, by expending candidate committee funds for State business, by failing to maintain itemized receipts for those expenditures, by accepting gifts of influence, and by making contributions to other candidate committees, both directly and through a conduit.

On July 29, 2003, Respondents, by their attorneys, Hale Hackstaff Friesen, LLP, under C.R.C.P. 56, filed a Motion for Summary Judgment and Supporting Brief. Complainant, Mac Williams, filed an Objection to Motion for Summary Judgment on August 13, 2003. In support of their motion, Respondents assert that Complainant's claims are barred by the applicable statute of limitations; that the allegations concerning issues other than contributions and expenditures are beyond the jurisdiction of this forum; and that the conduct complained of is expressly authorized by the FCPA. For reasons discussed below, the Administrative Law Judge (ALJ) agrees and grants Respondents' Motion for Summary Judgment.

Alleged Violations That Occurred Prior to May 30, 2002, Are Time Barred by § 1-45-111(2)(a), C.R.S.

Complainant filed his complaint with the Secretary of State on November 26, 2002. Section 1-45-111(2)(a), C.R.S. requires that any person who believes that a violation of section 1-45-105.3, 105.5, 106, 108, 114, 115, or 117 has occurred file a written complaint with the Secretary of State no later than one

hundred eighty days after the date of the alleged violation. One hundred and eight days prior to November 26, 2002, is May 30, 2002.

Several of Complainant's allegations concern conduct that occurred prior to May 30, 2002, including contributions received from Friends of Scott McInnis on August 30, 2000; June 7, 2001; and October 29, 2001, as well as a contribution from Phillip Morris Tobacco of NY on October 17, 2001. As a matter of law, these allegations must be dismissed. Additionally, all allegations relating to Respondents' use of unexpended campaign contributions and payments to HMC West, Inc. made prior to May 30, 2002, are time barred by § 1-45-111(2)(a).

Allegations Concerning Issues Other than the Contribution and Expenditures Issues of the Fair Campaign Practices Act Are Beyond the Jurisdiction of this Forum.

Complainant asserts that Gay Hammer and HMC West, Inc. have violated § 24-6-302(2), C.R.S. Additionally, Complainant alleges that Gay Hammer, Linda Bowman, and HMC West, Inc. are conduits for candidate committees to make contributions to other candidate committees in violation of § 1-45-105.3. Neither Gay Hammer, Linda Bownan, nor HMC West, Inc. are parties to this action and therefore the ALJ has no jurisdiction over their compliance with § 24-6-302(2) or § 1-45-105.3. Moreover, alleged violations of § 24-6-302(2) do not fall within the ALJ's jurisdiction under the FCPA.

Section 24-6-203 is referenced in the FCPA. However, the only reference is found in § 1-45-105.5(1)(c)(IV)(B), where it relates to a candidate reporting the value of a gifted meal from a lobbyist. Complainant does not allege that Senator Teck accepted a gift of a meal from a lobbyist and failed to make the necessary disclosures.

The FCPA confers jurisdiction on the ALJ to hear complaints concerning alleged violations of section 1-45-105.3, 105.5, 106, 108, 114, 115 and 117. Accordingly, all claims concerning alleged violations of § 24-6-203 and 302(2) and allegations against persons or entities not parties to this action are beyond the jurisdiction of this forum.

Respondents' Use of Unexpended Campaign Contributions Is Expressly Authorized by the FCPA.

Complainant contends that Respondents' violated the FCPA by expending campaign funds on "state business" at a time when Senator Tech faced no opposition for reelection and expended candidate committee money on personal travel expenses for legislative duties. In support of his argument, Complainant

relies on § 1-45-106(1)(a)(II), which reads, “In no event shall contributions to a candidate committee be used for personal purposes not reasonably related to support the election of the candidate.”

However, in addition to the uses set forth in § 1-45-106(1)(a), § 1-45-106(b) permits a candidate to use unexpended campaign contributions in a variety of ways, including political issue education, which includes obtaining information from or providing information to the electorate; or any expenses directly related to such person’s official duties as an elected official, including but not limited to, expenses for the purchase or lease of office equipment and supplies, necessary travel and lodging expense for legislative education such as seminars, conferences, and meetings on legislative issues; and for telephone and pager services.

According the supporting documents, Senator Teck was reimbursed for trips around the State, both in and outside his District, for political issue education and necessary travel and lodging expenses for legislative education seminars, conferences and meetings on legislative issues. Since May 30, 2002, those trips include:

September 21, 2002:	Tax Commission Trip to Denver
September 13, 2002:	Chronic Wasting Disease Symposium in Denver
August 20, 2002:	Smoke Management Meeting in Rifle; North Fork Water Meeting in Denver
July 25, 2002:	Council of State Government West meeting in Lake Tahoe
June 25, 2002:	Scenic Byways Commission Meeting in Denver
June 18, 2002:	National Security Seminars/US Army War College.

In addition to these expenditures, Senator Teck, by way of affidavit, states that he was reimbursed by the Committee for expenses related to the purchase of office equipment, telephone expenses, travel related to his legislative duties, and campaign expenses. In accordance with the FCPA, all these expenditures are specifically permitted and summary judgment is proper when an adverse party fails to respond by affidavit or otherwise to moving party’s affidavit. *GTM Investments v. Depot, Inc.*, 694 P.2d 379 (Colo. App. 1984).

Complainant asserts that any campaign trips or seminars outside District 7 are not allowed under the FCPA because Senator Teck has no constituents outside his District and, as such, they cannot be considered as “supporting the election of the candidate”. As discussed above, the FCPA authorizes the use of

unexpended campaign contributions for purposes other than election of the candidate, which including political issue education and legislative education seminars, meetings or conferences. Moreover, the plain language of § 1-45-106(1)(b) contains no geographical limitations on the use of such campaign funds.

Maintaining Detailed Records as Required by the Rules Concerning the Fair Campaign Practices Act

Complainant claims that Respondents' violated the FCPA by failing to maintain itemized receipts for those expenditures that were reimbursed to Senator Teck by the Committee. However, Complainant fails to state which provisions of the FCPA Respondents violated. There is no evidence of any reporting violation; therefore, these claims must also be dismissed.

SUMMARY JUDGMENT

Under C. R.C.P. 56(c), summary judgment is proper, "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Schultz v. Wells*, 13 P.3d 846 (Colo. App. 2000). The burden of establishing there is no triable issue of material fact is on the moving party. *Aspen Wilderness Workshop, Inc. v. Colorado Water Conservation Bd.*, 901 P.2d 1251 (Colo. 1995).

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. When a motion for summary judgment is made and supported by affidavits and supplemented by answers to interrogatories, an adverse party may not rest upon the mere allegations or denials of the opposing party's pleading, but the opposing party's response, by affidavits or otherwise provided in C.R.C.P. 56, must set forth specific facts showing that there is a genuine issue for trial. C.R.C.P. 56(e).

The function of C.R.C.P. 56 is to avoid the expense and delay of trials when all the facts are admitted or when a party is unable to support by any competent evidence a contention of fact. *Norton v. Dartmouth Skis, Inc.*, 147 Colo. 436, 364 P.2d 866 (1961).

AGENCY DECISION

It is the Agency Decision of the Administrative Law Judge that Respondents' have established that there are no genuine issues as to any material facts and that they are entitled to judgment as a matter of law. The hearing scheduled on September 30, 2003 is vacated. Pursuant to § 1-45-111(2)(a), C.R.S., the decision of the ALJ shall be final and subject to review by the Colorado Court of Appeals, pursuant to § 24-4-106(11), C.R.S.

DONE AND SIGNED

September 9, 2003

Michelle A. Norcross
Administrative Law Judge

CERTIFICATE OF MAILING

I hereby certify that I have served a true and correct copy of the above **AGENCY DECISION GRANTING SUMMARY JUDGMENT** by placing same in the U.S. Mail, postage prepaid, at Denver, Colorado to:

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on this ____ day of September, 2003.